

1DATA.095A



PATENT

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventors	:	Belyi, et al.
Appl. No.	:	10/671,001
Filed	:	September 25, 2003
For	:	DATA VALIDATION SYSTEMS AND METHODS FOR FINANCIAL TRANSACTIONS
Examiner	:	Unknown
Group Art Unit	:	3624

REQUEST FOR RECONSIDERATION OF PETITION UNDER 37 CFR § 1.47(b)

Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Arlington, VA 22313-1450

Dear Sir:

In response to the Decision Refusing Status Under 37 CFR 1.47(b) mailed July 26, 2004,
Applicant submits the following:

DECLARATION IN COMPLIANCE WITH 35 U.S.C. §§ 115 AND 116

Applicant submits herewith a Declaration signed by an officer of the Owner (First Data Corporation) of the above-identified Application for the non-signing inventors Boris Belyi and Sharat Shankar under 37 CFR 1.47(b).

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PROOF OF PROPRIETARY INTEREST

Applicant submits herewith copies of employment-related documents signed by the inventors. For Boris Belyi, a copy of an Agreement and Release is included. For Sharat Shankar, a copy of an employment agreement is included. Both documents prove that Boris Belyi and Sharat Shankar were employed by TeleCheck, Inc., which is a First Data Corporation Company. In conjunction with the employment handbook already submitted in the Petition,

Appl. No. : 10/671,001
Filed : September 25, 2003

Applicant believes that these employment-related agreements submitted herewith provide sufficient proof of proprietary interest of the Owner in the above-identified Application.

PROOF OF IRREPARABLE DAMAGE

Applicant submits herewith a statement that shows proof of irreparable damage in accordance with MPEP 409.03(g).

CONCLUSION

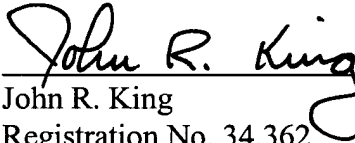
Applicant believes that the petition is now complete, and respectfully requests that this petition be granted. If there are any obstacles to a prompt approval of this petition, the Patent and Trademark Office is invited to call the undersigned attorney.

Respectfully submitted,

KNOBBE MARTENS OLSON & BEAR, LLP

Dated: 9/27/04

By:



John R. King

Registration No. 34,362

Attorney of Record

2040 Main Street

Fourteenth Floor

Irvine, CA 92614

Tel. (949)760-0404

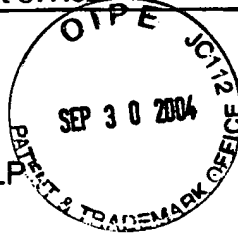
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UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov



KNOBBE MARTENS OLSON & BEAR LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE CA 92614

COPY MAILED

JUL 26 2004

In re Application of
Boris Belyi et al.
Application No. 10/671,001
Filed: September 25, 2003
Attorney Docket No. 1DATA.095A

OFFICE OF PETITIONS

:
:
: DECISION REFUSING STATUS
: UNDER 37 CFR 1.47(b)
:

This is decision on the petition filed under 37 CFR 1.47(b) on June 21, 2004.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition Under 37 CFR 1.47(b)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. **FAILURE TO RESPOND WILL RESULT IN ABANDONMENT OF THE APPLICATION.** Extensions of time may be obtained in accordance with 37 CFR 1.136(a).

The above-identified application was filed September 25, 2003, without an executed oath or declaration.

Accordingly, on December 19, 2003, a "Notice To File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge for the late filing of the oath or declaration.

In response, on June 21, 2004, the present petition was filed, accompanied by the late filing surcharge, and a four (4) month request for extension of time.

A grantable petition under 37 CFR 1.47(b) requires:

- (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims and drawings);
- (2) an acceptable oath or declaration in compliance with 35 U.S.C. §§ 115 and 116;
- (3) the petition fee;
- (4) a statement of the last known address of the non-signing inventor;
- (5) proof of proprietary interest, and
- (6) proof of irreparable damage.

The petition lacks items(2), (5) and (6). In regards to item (2), an oath or declaration for the patent application in compliance with 37 CFR 1.63 and 1.64 has not been presented. A declaration in compliance with 37 CFR 1.63, 1.64, and 1.67 must be presented, signed by all of the signing inventors, if any. If no inventor(s) will sign the declaration, the declaration may be signed on behalf of the inventor by an assignee. The oath or declaration must be signed by an officer of the corporation (president, vice president, secretary, or treasurer) on behalf of and as agent for the non-signing inventor(s). The office must identify his/her title in the declaration, as well as his/her mailing address, residence, if the applicant lives at a different location from where he or she customarily receives mail, as well as the citizenship of individual signing on behalf of the non-signing inventor. If the oath or declaration is not signed by an officer of the corporation, then proof of authority of the person signing on behalf of the corporation must be submitted.¹

In regards to item (5), petitioner must provide proof that the Rule 1.47(b) applicant has sufficient proprietary interest in the subject matter to justify the filing of the application.² Petitioners should provide a copy of the employment agreement between the non-signing inventors and the Rule 1.47(b) applicant (company); a copy of an assignment agreement showing that the invention disclosed in the application is assigned to the Rule 1.47(b) applicant; or a legal memorandum signed by an attorney familiar with the law of the jurisdiction stating that a court of competent jurisdiction would by the weight of authority in that jurisdiction award the title of the invention to the Rule 1.47(b) applicant.

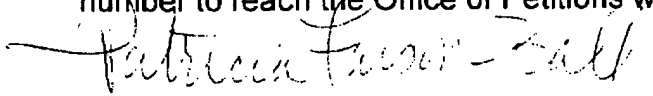
In regards to item (6), petitioner must provide proof of irreparable damages in accordance with MPEP 409.03(g).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

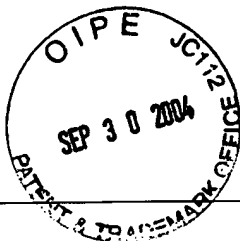
By FAX: (703) 872-9306
Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (703) 305-4497. Please note, effective September 28, 2004, the phone number to reach the Office of Petitions will change to (517) 272-3282.


Patricia Faison-Ball
Senior Petitions Attorney
Office of Petitions

¹MPEP 409.03(b).

²MPEP 409.03(f).

**DECLARATION - USA PATENT APPLICATION**

As a below named inventor, I hereby declare that:

My residence, post office address and citizenship are as stated below next to my name;

I believe I am an original, first and joint inventor of the subject matter which is claimed and for which a patent is sought on the invention entitled DATA VALIDATION SYSTEMS AND METHODS FOR FINANCIAL TRANSACTIONS; the specification of which was filed on **September 25, 2003** as Application Serial No. **10/671,001**.

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above;

I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, § 1.56;

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of first inventor: **Boris Belyi**

Residence of first inventor: **5740 Braesvalley Drive, Houston, Texas 77096**

Citizenship of first inventor: **Unknown**

Post Office Address of first inventor: **5740 Braesvalley Drive, Houston, Texas 77096**

Inventor's signature

Date

9/20/04

SIGNED BY Assignee FOR INVENTOR under 37 CFR 1.47(b):


Name:	Ken Algiene
Title:	Assistant Secretary, First Data Corporation
Mailing Address:	First Data Corporation 12500 East Bedford Ave., Suite M21A2 Englewood, CO 80112-5939
Citizenship:	United States

Full name of second inventor: **Sharat Shankar**

Residence of second inventor: **10744 Middlebury Way, Littleton, Colorado 80126**

Citizenship of second inventor: **India**

Post Office Address of second inventor: **10744 Middlebury Way, Littleton, Colorado 80126**

Inventor's signature 

Date 9/20/04

SIGNED BY Assignee FOR INVENTOR under 37 CFR 1.47(b):

Name:	Ken Algiene
Title:	Assistant Secretary, First Data Corporation
Mailing Address:	First Data Corporation 12500 East Bedford Ave., Suite M21A2 Englewood, CO 80112-5939
Citizenship:	United States

Send Correspondence To:
KNOBBE, MARTENS, OLSON & BEAR, LLP
Customer No. 20,995

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1DATA.095A

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

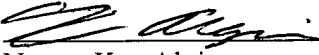
Applicant	:	Belyi, et al.
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For	:	DATA VALIDATION SYSTEMS AND METHODS FOR FINANCIAL TRANSACTIONS
Examiner	:	Unknown
Group Art Unit	:	3624

STATEMENT FOR PROOF OF IRREPARABLE DAMAGE UNDER M.P.E.P. 409.03(g)

This statement is made for the purpose of showing proof of irreparable damage for the Rule 1.47(b) Petition for the above-identified Application.

Inventors Boris Belyi and Sharat Shankar ("Inventors") refuse to sign the Inventor Declaration for compliance with 35 U.S.C. §§ 115 and 116. Any and all invention(s) associated with this Application belongs to First Data Corporation ("Applicant"). Applicant's potential patent rights in this invention would be irreparably damaged if the pendency of the Application is lost. Thus, Applicant would be irreparably damaged if not allowed to preserve the pendency of the Application by signing the Inventor Declaration and prosecuting the Application on behalf of the non-signing Inventors.

Dated: 9/20/04

By: 
Name: Ken Algiene
Title: Assistant Secretary
First Data Corporation
12500 East Bedford Ave., Suite M21A2
Englewood, CO 80112-5939

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Received
2-27-03

TeleCheck
AGREEMENT AND RELEASE

This is an Agreement and Release ("Agreement") between Boris Belyi ("Employee") and TeleCheck ("Company"), a business unit of First Data Corporation ("FDC"), whereby Employee's employment will be terminated effective February 24, 2003 due to an eligible reason under the FDC Severance Policy.

1. Payments and Benefits. In consideration for Employee's execution of this Agreement, but subject to the paragraph in this Agreement entitled "Review Period and Revocation," the Company agrees to provide to Employee the following payments and benefits, consistent with and subject to the terms of the FDC Severance Policy:

- (a) Employee will receive severance payments of Employee's then current regular salary, paid in accordance with the Company's regular payroll, in installments of \$3,619.92, less tax withholding and other legally allowed deductions, for a period of 5 months commencing on February 25, 2003 up to a total amount of \$36,199.17. In the event a partial semi-monthly pay period occurs during the period referenced in the preceding sentence, Employee will receive a prorated installment of severance pay for such pay period.
- (b) Employee will continue to be eligible for coverage under the Company's medical and dental plans during the period referenced in (a) above (the "Severance Period"), subject to the terms of the relevant welfare plans and in accordance with the Company's policies applicable to similarly situated employees, as amended from time to time. From and after the beginning of the Severance Period, Employee will not be eligible to continue active participation in any other Company benefit plan or program, including but not limited to long-term incentive compensation, nonqualified deferred compensation, employee stock purchase, 401(k), pension, or any other plan. Employee will be eligible for continued group medical coverage under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA") after Employee otherwise ceases to be eligible for group medical coverage. Details about specific plan coverages, conversion and distribution eligibility will be provided separately. Information on electing COBRA coverage will be provided at the conclusion of group welfare plan eligibility.
- (c) To the extent permitted under applicable law and pursuant to the terms of the FDC Severance Policy, Employee agrees the Company may deduct from the payments referenced in this Payments and Benefits paragraph any outstanding debt Employee owes the Company, FDC, their subsidiaries or Affiliates including, but not limited to, the value of unreturned property, any overpayment made to Employee, or any other amount Employee owed to Company, FDC, their subsidiaries or Affiliates.
- (d) Employee will receive outplacement services provided by Drake Beam Morin, provided such services are commenced during the period

referenced in 1(a) above. The Company must approve the type and scope of the outplacement services and the Company will pay Drake Beam Morin directly for any such services.

2. Complete Release. In consideration of those payments and benefits listed above which are payable only under this Agreement, Employee agrees to and hereby does knowingly and voluntarily release and discharge the Company, FDC, their subsidiaries and Affiliates, their agents, executives, directors, officers, employees and their predecessors and successors and the subsidiaries, Affiliates, agents, executives, directors, officers and employees of such predecessors and successors (the "Released Parties"), from any and all claims, causes of action and demands of any kind, whether known or unknown, which Employee has, ever has had, or ever in the future may have and which are based on acts or omissions occurring up to and including the date of this Agreement. Included in the release set forth in the preceding sentence, without limiting its scope, are claims arising under Title VII of the Civil Rights Act of 1964, the Employee Retirement Income Security Act of 1974, and the Age Discrimination in Employment Act of 1967, each as amended, as well as any other federal, state or local employment discrimination or labor laws, and/or contract, tort, or wage and hour laws, and which are related to Employee's employment with the Company or the termination of that employment. Employee does not waive claims, causes of action or demands of any kind that may arise after the date this Agreement is executed and which are based on acts or omissions occurring after such date.

For purposes of this Agreement, "Affiliate" means a Person that directly, or indirectly through one or more intermediaries, owns or controls, is owned or is controlled by, or is under common ownership or control with, another Person. As used herein, "control" means the power to direct the management or affairs of a Person, and "ownership" means the beneficial ownership of at least 5% of the voting securities of the Person. FDC shall be deemed to control any settlement network in which it has any equity ownership. As used herein, "Person" means any corporation, limited or general partnership, limited liability company, joint venture, association, organization or other entity.

3. Return of Company Property. On or before the last day of Employee's active employment, Employee will resign from all titles and positions with the Company and FDC, and return to the Company all property within Employee's possession belonging to the Company, FDC, their subsidiaries or Affiliates, any customers of the Company, FDC or such subsidiaries or Affiliates or any entity with whom the Company, FDC, their subsidiaries or Affiliates has entered into a confidentiality agreement, including, but not limited to, reports, maps, files, memoranda, records, credit cards, keys, passes, customer lists, information, forms, software, formulas, plans, documents, systems, designs, methodologies, product features, technology, and other written and computer material, equipment and access codes, and copies of same that Employee has requested or received, prepared or helped to prepare in connection with Employee's employment with the Company. Employee will not at any time, now or thereafter, retain any copies, duplicates, reproductions or excerpts of such property.

4. Non-Solicitation and Non-Disclosure. Employee understands that Employee is required to abide by the Non-Solicitation and Non-Disclosure Agreement, attached as Exhibit A, which is incorporated herein by reference.

5. Commencing Another Position. If Employee obtains employment with the Company, FDC or their subsidiaries or Affiliates during the Severance Period ("Subsequent

Company Employment"), any and all further payments or benefits under the Agreement immediately will cease as of the date of such employment. In the event of Subsequent Company Employment, Employee specifically agrees that the offer of employment to Employee by the Company, FDC or their subsidiaries or Affiliates, and Employee's acceptance thereof, is sufficient consideration to support the release of claims contained herein notwithstanding the fact that payments and benefits hereunder have ceased. If Employee obtains employment during the Severance Period with an entity other than the Company, FDC or their subsidiaries or Affiliates ("Subsequent Non-Company Employment"), Employee will, subject to the provisions of this Agreement, continue to receive payments under this Agreement and in accordance with the Company's regular payroll, but will immediately cease to be eligible to continue coverage under the Company's medical and dental plans as described in the paragraph entitled "Payments and Benefits", and will be eligible only for continuation of such coverage in accordance with COBRA. In any event, it is Employee's obligation to immediately advise the Company of Subsequent Non-Company Employment.

6. Cooperation. During the Severance Period and thereafter, Employee agrees to cooperate fully with the Company, FDC, their financial and legal advisors, and/or government officials in any claims, investigations, administrative proceedings, lawsuits, and other legal, internal or business matters, as reasonably requested by the Company or FDC. To the extent that it is consistent with the Company's and FDC's by-laws, certificate of incorporation and applicable laws, the Company or FDC will engage on its own behalf to represent Employee with legal counsel of its choosing if necessary in connection with such cooperation, and in any event will reimburse Employee for documented, reasonable and necessary out-of-pocket travel expenses as are required and which Employee incurs in complying with Employee's obligations under this paragraph. If for any reason the Company or FDC determines that a conflict of interest may exist between Employee and the Company or FDC, the Company or FDC may require Employee to obtain separate counsel in which case the Company or FDC will subsequently reimburse Employee for the reasonable and necessary legal fees associated with the use of such counsel and/or related travel expenses (as limited above), to the extent that such reimbursement is permitted by the Company's and FDC's by-laws, certificate of incorporation and applicable laws.

7. Confidentiality and Non-Disparagement. Employee hereby agrees to maintain the terms and conditions of this Agreement in the strictest confidence and agrees not to disclose any of the terms of this Agreement unless and to the extent such disclosure is required by law or to secure advice from a legal or tax advisor or outplacement provider. This obligation extends to Employee's agents, including all tax advisors, who Employee must duly notify of the confidential nature of the content of this Agreement and of their confidential obligations hereunder. Employee agrees not to make any disparaging comments about the Company or, FDC, their subsidiaries and Affiliates, or any of their officers, directors, representatives, employees and agents.

8. Severability and Governing Law. In the event that any provision of this Agreement is deemed unenforceable, Employee agrees that a court of competent jurisdiction shall have jurisdiction to reform such provision to the extent necessary to cause it to be enforceable to the maximum extent permitted by law. The provisions in this Agreement are severable, and if any provision is determined to be prohibited or unenforceable in any jurisdiction, the remaining provisions shall nevertheless be binding and enforceable. This

Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware without regard to principles of conflicts of law.

9. Non-Admission. Nothing in this Agreement is intended to or shall be construed as an admission by the Company or any of the other Released Parties that it violated any law, interfered with any right, breached any obligation or otherwise engaged in any improper or illegal conduct with respect to Employee or otherwise, the Released Parties expressly denying any such improper or illegal conduct.

10. Other Agreements, Survivability and Successorship. Employee acknowledges that this Agreement is supplemental to, and does not supersede, any non-solicitation, non-compete, non-disclosure, confidentiality or other agreement or agreements that Employee may have signed while employed with the Company. In addition to this paragraph, the following paragraphs in this Agreement survive the termination of this Agreement: Complete Release; Non-Solicitation and Non-Disclosure; Cooperation; Confidentiality and Non-Disparagement; Non-Admission; and Severability and Governing Law. Employee acknowledges that the following paragraphs are material provisions of this Agreement: Complete Release; Return of Company Property; Non-Solicitation and Non-Disclosure; Commencing Another Position; Cooperation; and Confidentiality and Non-Disparagement (collectively, the "Material Provisions"). In the event of a breach or a threatened breach by Employee of any of the Material Provisions, the Company shall be entitled to any remedies available at law or equity.

This Agreement inures to the benefit of any successors or assigns of the Company or FDC, and Employee's obligations apply equally to the Company, FDC, and their successors and assigns.

11. Paragraph Headings. The paragraph headings in this Agreement are for convenience of reference only and shall not be deemed to alter or affect the meaning or interpretation of any provisions hereof.

12. Review Period and Revocation. Employee acknowledges that Employee was given 21 days to review this Agreement and the attached Exhibit A, from the time Employee received it on February 3, 2003. Employee acknowledges that the Company has made no promises to Employee other than those contained in this Agreement. **EMPLOYEE ACKNOWLEDGES EMPLOYEE WAS ADVISED TO REVIEW THIS AGREEMENT WITH AN ATTORNEY OF EMPLOYEE'S CHOICE.** Employee is further advised that Employee has 7 days after Employee signs this Agreement to revoke it by notifying the Company of such revocation in writing. In the event Employee revokes this Agreement as specified in the immediately preceding sentence, the Company shall deem this Agreement to be void in its entirety, in which case neither party shall be bound by its terms and no payment shall be made to the Employee hereunder.

Employee's signature below indicates that Employee has carefully read and reviewed this Agreement. Employee fully understands all of the Agreement's terms and conditions and has not relied on any other representations or statements, written or oral, by the Released Parties or their employees or agents concerning the terms of the Agreement or any other matters not contained herein. Employee acknowledges that Employee's signature below constitutes a knowing and voluntary execution of this Agreement and Employee signs the same of Employee's own free will and it is Employee's intention to be bound thereby.

Dated this 21 day of February, 2003.

Boris Belyi
Boris Belyi

Witnessed By:

Elizabeth Belyi

TeleCheck

By: W. L. Th

Title: V. P. M.

EXHIBIT A

NON-SOLICITATION AND NON-DISCLOSURE AGREEMENT

For purposes of this Exhibit A, "Company" refers to TeleCheck, First Data Corporation or its Affiliates (as defined in the Agreement) for which Employee works or may work in the future (hereinafter individually and collectively referred to as the "Company" for purposes of this Exhibit A).

Employee agrees that the Company is engaged in a highly competitive business and has expended, and continues to expend, significant money, skill, and time to develop and maintain valuable customer relationships, trade secrets, and confidential and proprietary information. Employee agrees that Employee's work for the Company has brought Employee into close contact with many of the Company's customers, Trade Secrets, Confidential Information, and Third Party Information (as defined below) and the Company has provided Employee access to such information to perform Employee's job duties, the disclosure of which would cause the Company significant and irreparable harm. Employee recognizes that any unauthorized disclosure of Third Party Information could breach non-disclosure obligations or violate applicable laws or Company policy. Employee further agrees that the covenants in this Agreement are reasonable and necessary to protect the Company's legitimate business interests in its customer relationships, Trade Secrets, Confidential Information, and Third Party Information (as defined in Section I below).

- I. **Nondisclosure of Trade Secrets, Confidential Information and Third Party Information.** Employee agrees that for so long as the pertinent information or documentation remains a Trade Secret, Employee will not use, disclose, or disseminate to any other person, organization, or entity or otherwise employ any Company Trade Secrets. Employee further agrees that for two (2) years after the cessation of Employee's employment with the Company, Employee will not use, disclose, or disseminate to any other person, organization, or entity or otherwise employ any Company Confidential Information. The obligations set forth herein shall not apply to any Trade Secrets or Confidential Information which shall have become generally known to competitors of the Company through no act or omission of Employee. Employee agrees that for so long as the pertinent information or documentation is subject to protection under Company nondisclosure obligations, policy or applicable law but in any event not less than two (2) years, Employee will not use, disclose, or disseminate to any other person, organization, or entity or otherwise employ any Third Party Information.

- A. Company "Trade Secrets" includes but is not limited to the following:

1. any data or information that is competitively sensitive or commercially valuable, and not generally known to the public, including, but not limited to, products planning information, marketing strategies, marketing results, forecasts or strategies, plans, finance, operations, reports, data, customer relationships, customer profiles, customer lists, sales estimates, business plans, and internal performance results relating to the past, present or future business activities of the Company, its customers, clients, and suppliers; and

2. any scientific or technical information, design, process, procedure, formula, or improvement, computer software, object code, source code, specifications, inventions, systems information, whether or not patentable or copyrightable.
- B. Company "Confidential Information" means any data or information and documentation, other than Trade Secrets, which is valuable to the Company and not generally known to the public, including but not limited to:
1. Financial information, including but not limited to earnings, assets, debts, prices, fee structures, volumes of purchases or sales, or other financial data, whether relating to the Company generally, or to particular products, services, geographic areas, or time periods; and
 2. Supply and service information, including but not limited to information concerning the goods and services utilized or purchased by the Company, the names and addresses of suppliers, terms of supplier service contracts, or of particular transactions, or related information about potential suppliers, to the extent that such information is not generally known to the public, and to the extent that the combination of suppliers or use of particular suppliers, though generally known or available, yields advantages to the Company the details of which are not generally known.
- C. "Third Party Information" means any data or information of the Company's customers, suppliers, consumers or employees that the Company is prohibited by law, contract or Company policy from disclosing. By way of example such information includes but is not limited to:
1. Product specifications, marketing strategies, pricing, sales volumes, discounts;
 2. Nonpublic personal information regarding consumers, including but not limited to names, addresses, credit card numbers, financial transactions, and account balances;
 3. Personnel information, including but not limited to employees' personal or medical histories, compensation or other terms of employment, actual or proposed promotions, hiring, resignations, disciplinary actions, terminations or reasons therefore, training methods, performance, skills, qualifications and abilities, or other employee information; and
 4. Customer information, which is not protected by a separate confidentiality agreement, including but not limited to any compilations of past, existing or prospective customers, agreements between customers and the Company, status of customer accounts or credit, the identity of customer representatives responsible for entering into contracts with the Company, specific customer needs and requirements, or related information about actual or prospective customers or other nonpublic consumer information.

- II. **Non-Solicitation of Customers.** Employee agrees that, for twelve (12) months after the cessation of Employee's employment with the Company, Employee will not solicit, contact, call upon, or attempt to communicate with any customer or prospective customer of the Company for the purpose of providing any products or services substantially similar to those Employee provided while employed with the Company. This restriction shall apply only to any customer or prospective customer of the Company with whom Employee had contact or about whom Employee learned Trade Secrets, Confidential Information, or Third Party Information during the last twenty-four (24) months of Employee's employment with the Company. For the purpose of this Section II, "contact" means interaction between Employee and the customer, or prospective customer which takes place to further the business relationship, or making sales to or performing services for the customer, or prospective customer on behalf of the Company.
- III. **Non-Solicitation of Employees.** For twelve (12) months after the cessation of employment with the Company, Employee will not recruit, hire, or attempt to recruit or hire, directly or by assisting others, any employee of the Company with whom Employee had contact or about whom Employee learned Trade Secrets, Confidential Information, or Third Party Information during Employee's last twenty-four (24) months of employment with the Company. For the purposes of this Section III, "contact" means any interaction whatsoever between Employee and the other employee.
- IV. **Successorship.** As part of this provision, Employee understands and agrees that should Employee become employed by another entity owned or otherwise affiliated with First Data Corporation (such as its divisions or unincorporated affiliates), the obligations of this Agreement follow Employee to such other entity automatically and without further action, and that entity becomes the "Company" within the meaning of this Agreement.

BEST AVAILABLE COPY

Fax to
Christal Olson

**FIRST DATA CORPORATION
NON-SOLICITATION, NON-DISCLOSURE AND NON-COMPETE AGREEMENT
TEXAS, NEBRASKA AND GEORGIA EMPLOYEES**

This Agreement is between FIRST DATA CORPORATION, a Delaware corporation and its subsidiaries and affiliates (hereinafter collectively referred to as "FDC" or the "Company"), as EMPLOYER, and ~~SHARON SWANLICK~~ as EMPLOYEE.

In consideration of continued employment by FDC, the Confidential Information I will receive during my employment and the grant of a number of nonqualified stock options pursuant to the FDC 1992 Long-Term Incentive Plan, and other good and valuable consideration, I agree as follows:

1. **Non-solicitation of Business.** I covenant and agree that for a period of one year after the termination, for any reason, of my employment with FDC, I will not directly or indirectly (a) solicit any business similar to that performed or planned (at the time of my termination) by FDC from any person or organization which was, on or before my termination date a customer or bona fide prospective customer of FDC, or (b) request or advise any such customer or bona fide prospective customer of FDC to withdraw, curtail or cancel its business dealings with FDC. Provided, however, that the restrictions set forth in this paragraph shall apply only to customers or bona fide prospective customers of FDC with whom I had contact in an effort to further a business relationship on behalf of FDC; during the two years immediately preceding termination of my employment, or about whom I received Confidential Information as defined in paragraph 2 below, as a consequence of my employment with FDC, during the two years preceding the termination of my employment, which would give me an unfair advantage over FDC in dealing with such customer or bona fide prospective customer.

2. **Non-disclosure.** During my employment with FDC, I recognize that I will learn information about FDC that is not generally known to the public or to competitors which constitutes confidential information and/or trade secrets ("Confidential Information"). Confidential Information means:
 1. Any data or information that is competitively sensitive material, and not generally known to the public, including, but not limited to, products planning information, marketing strategies, plans, finance, operations, customer relationships, customer profiles, sales estimates, business plans, and internal performance results relating to the past, present or future business activities of FDC, and its customers, clients and suppliers; and
 2. Any scientific or technical information, design, process, procedure, formula, or improvement that is not generally known to the public and is commercially valuable and secret in the sense that its confidentiality affords FDC a competitive

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advantage over its competitors; and

3. All confidential or proprietary concepts, documentation, reports, data, specifications, computer software, source code, object code, flow charts, databases, inventions, information, know-how, show-how and trade secrets not generally known to the public, whether or not patentable or copyrightable; and
4. All documents, inventions, substances, engineering and laboratory notebooks, drawings, diagrams, specifications, bills of material, equipment, prototypes and models relating to any of the foregoing, confidential or proprietary information not generally known to the public and stored on any computer system and software used by FDC in connection with the business or operations of FDC, and any other tangible manifestation of the foregoing which now exist or come into my control or possession as a result of my employment, in whatever form provided or duplicated.

During my employment with FDC and for a period of two years after my employment with FDC ends for any reason, I will not disclose to any person or organization, directly or indirectly, any Confidential Information that I received or developed at any time as a result of my employment with FDC, except that during my employment with FDC I may make such disclosures as necessary and appropriate in connection with the performance of my duties as an employee of FDC. Upon the termination of my employment with FDC, I shall return all FDC materials and Confidential Information (including without limitation, all memoranda and notes containing the names, addresses and needs of FDC clients and bona fide prospective clients) in my possession or over which I exercise control regardless of whether such materials were prepared by FDC, me or a third party.

3. **Non-Competition.** During my employment with FDC, I have utilized or will utilize unique skills and have acquired or will acquire specialized knowledge of FDC's business and methods of operations. In addition, I have acquired or will acquire the goodwill of FDC customers with whom I have had direct contact, which rightfully belongs to FDC. For a period of one year after the termination of my employment with FDC for any reason, I will not, anywhere in the United States, engage in competition with FDC by accepting employment requiring the performance of duties substantially similar to those performed for FDC (during the last year of my employment) with any customer or bona fide prospective customer of FDC with whom or which I had contact during the last two years of my employment with FDC. In addition, I agree not to engage in competition with FDC by accepting employment, anywhere in the United States, requiring the performance of duties substantially similar to those I performed for FDC (during the last year of my employment) with a former customer who did business with FDC within two years prior to my departure from employment with FDC and with whom or which I had contact during the last two years of my employment with FDC. I hereby acknowledge that prospective employers exist in my geographical area such that employment opportunities are available to me which would not be in violation of this provision of this

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Agreement. I further acknowledge that this provision is reasonable in scope and does not constitute a restraint of trade with respect to my ability to obtain alternate employment in the event my employment with FDC is terminated for any reason either by myself or FDC.

4. **Non-interference with Employees.** For one year after my termination from employment, for any reason, with FDC, I will not anywhere in the world, directly or indirectly recruit, hire, solicit, or encourage any FDC employee to leave FDC's employ to work for another if I had contact with such employee during the last two years of my employment with FDC.

- ~~5.~~ **Modification by Court.** I agree that the provisions of this Agreement including, without limitation, the time limitations set forth above are properly required for the adequate protection of FDC's business and are reasonable under all circumstances. In the event that any provision of this Agreement is deemed unenforceable, I agree that a court of competent jurisdiction shall have jurisdiction to reform such provision to the extent necessary to cause it to be enforceable to the maximum extent permitted by law.

6. **Remedies.** I acknowledge and agree that breach of any of the foregoing covenants will cause irreparable injury to FDC, monetary damages will be difficult to ascertain in whole or in part and that FDC will be entitled to seek specific performance or injunctive relief in addition to any other rights and remedies available to FDC.

7. **Miscellaneous Provisions.**

1. **Amendments in Writing.** No modification, amendment to, or waiver of this Agreement or any of its provisions shall be binding upon me or FDC unless made in writing and duly signed by both parties except that I agree that FDC may, at its option, and without consideration substitute less restrictive provisions relating to non-solicitation or non-competition for those contained herein.
1. **Severability.** The provisions in this Agreement are severable, and if any provision is determined to be prohibited or unenforceable in any jurisdiction, the remaining provisions shall nevertheless be binding and enforceable.
2. **Delaware Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Delaware without regard to principles of conflict of law.
3. **Forum.** If any legal action or other proceeding is brought for enforcement of this Agreement or because of an alleged dispute, breach or default in connection with

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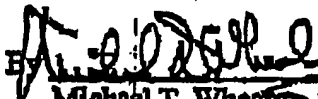
any provisions of this Agreement, I agree that such action shall be brought exclusively in a state or federal court sitting in the city or county nearest to and located in the same state as the principal location of the primary FDC entity that employs me.

4. **Other Obligations.** This Agreement is in addition to and not in lieu of other non-solicitation, non-disclosure and non-competition obligations that I may owe to FDC.

This Agreement is dated the 31 day of MAY, 1999.

-- FIRST DATA CORPORATION --

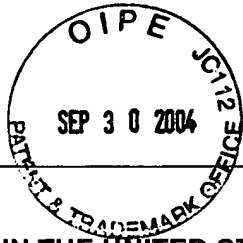
-- EMPLOYEE --


Michael T. Wheatly
Executive Vice President
& General Counsel

By: 
Employee's Signature

SHARAT SHANIKAR
Employee's Name

002-82-0376
Employee's Social Security Number



PATENT

Case Docket No. 1DATA.095A

Date: September 27, 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Belyi, et al.
Appl. No. : 10/671,001
Filed : September 25, 2003
For : DATA VALIDATION SYSTEMS
AND METHODS FOR
FINANCIAL TRANSACTIONS
Examiner : Unknown
Group Art Unit : 3624

I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

9/27/04

(Date)

John R. King
John R. King, Reg. No. 34,362

TRANSMITTAL LETTER

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Enclosed for filing in the above-identified application are:

- (X) Request for Reconsideration of Petition under 37 CFR §1.47(b).
- (X) Copy of Decision Refusing Status under 37 CFR §1.47(b), mailed July 26, 2004.
- (X) Declaration in Compliance with 35 U.S.C. §§115 and 116.
- (X) Copy of Agreement and Release form.
- (X) Copy of Employment Agreement.
- (X) Statement for Proof of Irreparable Damage under M.P.E.P. 409.03(g).
- (X) Check in the amount of \$130 for the petition fee.
- (X) The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment, to Account No. 11-1410.
- (X) Return prepaid postcard.

John R. King
John R. King
Registration No. 34,362
Attorney of Record
Customer No. 20,995
(949) 760-0404